FILE COPY

FILED
JUN 24 1946
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM A. D. 1945

No. 231

ARKANSAS NATURAL GAS CORPORATION,
Petitioner,

versus

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

HENRY C. WALKER, JR.,
JOHN O. WICKS,
Counsel for Petitioner.

Blanchard, Goldstein,
Walker & O'Quin,
Shreveport, Louisiana.

Weller, Wicks and Wallace,
Pittsburgh, Pennsylvania.

Of Counsel.

Montgomery-Andree Printing Co., Inc., 430-32 Chartres, N. O., La.

INDEX

Subject Index

Page

PETITION FOR WRIT OF CERTIORARI:

Statement of the Matter Involved..... 1-9

Jurisdiction of the Court..... 9

Questions Presented:

1. Should the Honorable Fifth Circuit Court, after properly construing Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 and in the light of controlling and undisputed evidence of economies and advantages flowing from joint management and control of Petitioner's oil business and gas utility business, have modified the order of the Securities and Exchange Commission and permitted the retention of these properties in the same holding company system? 9

2. Should not the Honorable Fifth Circuit Court, upon rejecting the Securities and Exchange Commission's interpretation of the Public Utility Holding Company Act of 1935 as requiring a functional or operational relationship between the utility and non-utility properties to permit retention thereof in the same holding company system, have remanded the case to the Commission for further consideration of the evidence and findings since the Commission had not made findings under a proper construction of Section 11 (b) (1) of the Act? 10

Subject Index (Continued)

Page

3. Has not the Honorable Fifth Circuit Court invaded the province of the Securities and Exchange Commission in passing upon the weight of evidence under a correct interpretation of Section 11 (b) (1) of the Public Utility Holding Company Act of 1935—a question which the Commission had not previously passed upon?..... 10

Reasons for Allowance of the Writ:

1. An important question of Federal Law, involving a construction of Section 11 (b) (1) of the Public Utility Holding Company Act of 1935, is involved..... 10-12

2. The opinion of the Honorable Fifth Circuit Court in this cause is in conflict with that of the United States Court of Appeals for the District of Columbia in Engineers Public Service Company v. Securities and Exchange Commission, 138 F. (2d) 936, now pending on certiorari in this Honorable Court and assigned for reargument during the week of October 14th..... 12-15

3. Should certiorari be denied Petitioner and thereafter this Honorable Court affirm the decision of the United States Court of Appeals for the District of Columbia in the case of Engineers Public Service Company v. Securities and Exchange Commission, the controlling authority of the decision of this Honorable Court in that case will be

Subject Index (Continued)

Page

unavailing to Petitioner and its right to retain its oil business with its single integrated gas utility will be lost, although supported by evidence stronger and broader than the evidence on the same issue in the Engineers case 15

Prayer 15-16

BRIEF IN SUPPORT OF PETITION:

Opinion of Court Below 17

Jurisdiction of this Honorable Court 18

Statement of the Case 18

Specification of Errors:

1. The Honorable Fifth Circuit Court, construing Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 as not requiring a functional relationship between utility and non-utility properties, contrary to the interpretation of the Securities and Exchange Commission, erred in failing to modify the Commission's order to permit retention of Petitioner's oil business together with its integrated gas utility system since the only evidence in the record shows, as a matter of law, that such retention is necessary or appropriate in the public interest, for the protection of investors and consumers, and is not detrimental to the functioning of the utility 18

Subject Index (Continued)

Page

2. At least the Honorable Fifth Circuit Court, upon properly construing the Act, erred in not remanding the cause to the Securities and Exchange Commission for further consideration of the evidence and findings in the light of the Act as properly construed, since the Commission had made no findings from the evidence except under its erroneous interpretation of the Act..... 19

Argument:

First Specification 19-28
Second Specification 28-30

Cases Cited

Engineers Public Service Company v. Securities and Exchange Commission, 138 F. (2d) 936.....12, 15, 30
Otis & Company v. Securities and Exchange Commission, 323 U. S. 624, 89 L. ed. 460..... 18
Securities and Exchange Commission v. Chenery Corporation, 318 U. S. 80, 87 L. ed. 626..... 27, 29

Statutes Cited

Public Utility Holding Company Act of 1935, Sec. 24; 15 USCA, Sec. 79x..... 2, 18
Public Utility Holding Company Act of 1935, Sec. 11 (b) (1); 15 USCA, Sec. 79k (b) (1) 2, 8, 9, 10, 12, 18, 19, 25, 30
Public Utility Holding Company Act of 1935, Sec. 2 (a) (4); 15 USCA, Sec. 79b (a) (4) (5) 5
United States Code, Title 28, Sec. 347..... 9, 18

Text Books Cited

5 C.J.S., Sec. 1925, pp. 1429 and 1431..... 26

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM A. D. 1945

No.

ARKANSAS NATURAL GAS CORPORATION,
Petitioner,

versus

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Supreme Court of The United States:

Petitioner, Arkansas Natural Gas Corporation, presents its petition for writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, and in support thereof respectfully shows:

STATEMENT OF THE MATTER INVOLVED.

This is a civil action instituted by Petitioner by the filing, on June 8th, 1944 (R. 6) in the Fifth Circuit Court

of Appeals, of its petition for review, under Section 24 of the Public Utility Holding Company Act of August 26, 1935, [1] of an order issued by the Securities and Exchange Commission, May 5, 1944, under Section 11 (b) (1) of the Act, 15 USCA, Section 79k (b) (1) [2], requiring Petitioner (a registered holding company under the Act) to divest itself of ownership and control of its subsidiary corporations engaged in the production, transportation, refining and marketing of petroleum and petroleum products. (R. 5-20).

The Commission instituted proceedings under the Act against Petitioner and its subsidiary companies [3] by its order of July 3, 1941 (R. 7), stating it appeared to the Commission that:

"The holding company system of Arkansas Natural Gas Gas Corporation is not confined in its

---

(1) 49 Stat. 803, 15 USCA, Sec. 79x.

(2) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding company system of which such company is a part to a single integrated public utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public utility system:

* * * * * *

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public utility systems the retention of an interest in any business (other than the business of a public utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

(3) Petitioner is a subsidiary of Cities Service Company. The order was directed also to Cities Service Company and its other subsidiaries, but this review concerns only Petitioner and its subsidiaries.

operations to those of an integrated public utility system as provided by Section 11 (b) (1) of the Act or to such single system and additional systems which may be retained under Clauses (A), (B) and (C) of said section and to such other businesses as are reasonably incidental or economically necessary or appropriate to the operations of such system or systems." (R. 27).

and requiring answer to the allegations of the order by August 2, 1941. (R. 29).

Petitioner and its subsidiary companies answered August 1, 1941, denying the allegations of the order with reference to such companies and alleging in response thereto that Petitioner's holding company system consisted of an integrated natural gas public utility system as defined in the Act and "other businesses" consisting of oil production, transportation, refining and marketing properties, which were reasonably incidental and economically necessary and appropriate to the operations of the integrated utility system and were retainable by Petitioner under Section 11 (b) (1) as necessary or appropriate in the public interest and for the protection of investors and consumers and not detrimental to the proper functioning of Petitioner's utility system. (R. 38).

Hearings before the Commission with reference to the issues thus formed were commenced October 28, 1941,

and concluded November 19, 1941. Petitioner's evidence offered at such hearings, and which was not contradicted or rebutted disclosed the following facts:

The holding company system of Petitioner (the only holding company in the system) consists of the following:

1. Arkansas Louisiana Gas Company	100% of capital stock.
Gas Advisers, Inc.	26% of capital stock.
2. Arkansas Fuel Oil Company	100% of capital stock.
Arkansas Pipeline Corporation	100% of capital stock.
Arkana Transit Corporation	40% of capital stock.
Orange State Oil Company	99.999% of capital stock.
Petroleum Advisers, Inc.	17% of capital stock.
The Penn Wyo Trust	21.9% of capital stock.
The Atlantic Oil Company	100% of capital stock.
The Columbus Oil Company	100% of capital stock.
The Phebus Oil Company	100% of capital stock.
3. Lisbon Gasoline Company, Inc.	50% of capital stock.
4. Transark Oil & Gas Company	50% of capital stock.

(R. 224).

Of such subsidiaries, only Arkansas Louisiana Gas Company is a public utility within Section 2 (a) (4) of the Act, 15 USCA, Section 79b (a) (4) (5). [4] That company operates an admittedly integrated gas utility system in East Texas, North Louisiana and Arkansas. (R. 651).

The other subsidiaries are producers, transporters, refiners and marketers of petroleum and petroleum products, operating largely within the area of the gas company's operations, except Transark Oil and Gas Company which owns and operates a single gas well in the State of Wyoming and Petroleum Advisers, Inc., and Gas Advisers, Inc.,—mutual service companies. (R. 652).

Notwithstanding the only evidence offered shows that retention of the oil business in the same holding company system with the gas utility inures to the benefit of consumers of natural gas and investors in the securities of the holding company, since the joint operation of these two businesses results in annual savings of more than $200,000.00 to the gas utility, or more than 21% of its net income; and to the oil business of more than 42% of its net income; the oil business serves the gas utility through its gasoline extraction plants by removing liquid hydrocarbons from the gas to eliminate the hazards incident to

---

[4] Sec. 2. (a) When used in this title, unless the context otherwise requires—

(4) "Gas utility company" means any company which owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light or power. (Sec. 2. (a) (4).)

(5) "Public-utility company" means an electric utility company or a gas utility company. (Sec. 2. (a) (5).)

wet gas; the joint operation results in lower interest rates and better bank credits, in the acquisition of gas reserves and the conservation of both oil and gas and the joint operations are not detrimental to the functioning of the gas utility but actually beneficial and in no respect impedes or hinders public regulation, the Commission in its findings and conclusions accompanying its order of May 5, 1944 (R. 594), determining the issues, concluded that Petitioner's oil business "as a whole" is not retainable under the "other business" standards of Section 11 (b) (1) because the link at which the oil operations are joined, operationally, to the utility operations ends with production properties and thus the oil transportation, refining and marketing properties are not retainable, although the Commission found the evidence "shows at great length the affinity between oil and gas production, the close operating relations of Arkansas Oil and Arkansas Gas, which are under common management, the treatment of natural gas by plants of the oil company, and a number of operating savings and financial advantages achieved by joint operation of the two companies". (R. 652-653).

While the Commission recognized the economies and advantages flowing to investors, consumers and the general public by joint operation of the oil and gas properties, it denied retention of the oil properties in the same holding company system with the gas utility company because such oil properties, in their entirety, are, so it found, not functionally related to the operations of the gas utility. This holding was predicated on the Commission's erroneous interpretation of the Act as requiring such a functional relationship to permit retention.

On June 8th, 1944, within the 60 day limitation provided in Section 24 of the Act, Petitioner filed, in the Honorable Fifth Circuit Court of Appeals, its petition to review the order of the Securities and Exchange Commission, (R. 5) urging, among other specifications of error, that:

> "The Commission erred in finding without any evidence in support thereof and contrary to substantial evidence that while a portion of the intergrated oil business of Petitioner may be said to be reasonably incidental or economically necessary or appropriate to the operations of the natural gas public utility, other parts thereof are not and that such oil business as a whole is not reasonably incidental or economically necessary or appropriate to the operations of the utility."
>
> "The Commission erred in finding that even if it were required to construe the 'second other business' clause of Section 11 (b) (1) of the Act as an exclusive standard, the proof in this proceeding does not satisfy the requirements of the Act by construing the Act to impose an additional requirement not set forth in Section 11 (b) (1), namely, that a retainable non-utility business must bear an operating relationship to the retainable public utility."
>
> "The Commission erred in making its findings as to the reasonable incidence, economic necessity and appropriateness of the oil business of Petitioner to the operations of the utility in not finding that the retention of such non-utility business is

necessary or appropriate in the public interest or for the protection of investors or consumers and is not detrimental to the proper functioning of the integrated utility system, since there is substantial and sufficient evidence, and none to the contrary, in this proceeding to constitute adequate proof in support of each of such findings."

The Honorable Fifth Circuit Court, in its opinion, dated March 22, 1946 (R. 829) recognized that under Section 11 (b) (1) of the Act a holding Company may retain a non-utility business along with a single integrated public utility system without the existence of a functional relationship between such businesses if the retention of the non-utility business by the holding company is necessary or appropriate in the public interest or necessary or appropriate for the protection of investors or necessary or appropriate for the protection of consumers—any one of the three—and is not detrimental to the functioning of the utility system, but found that "no case is made here of the public interest or protection of investors and consumers making necessary the retention of these oil businesses" (R. 831). The opinion of the Fifth Circuit Court rendered March 22, 1946, is not yet reported.

Petitioner filed its petition for rehearing in the Honorable Fifth Circuit Court on April 9th, 1946, directing the Court's attention to the fact the Securities and Exchange Commission had not passed upon the evidence in this case in the light of the proper interpretation of the Act, as construed by the Court; that the finding of facts in the presence of evidence and in the light of the Act as

properly construed is the province of the Commission unless the weight of evidence establishes such facts, as a matter of law, and that the evidence offered before the Commission by Petitioner is sufficient, as a matter of law, to require the Court, after interpreting the Act, to set aside the order of the Commission and enter its decree permitting Petitioner to retain its gas utility and oil properties in its holding company system. Petitioner prayed that the Commission's order be so modified, or set aside and the case remanded to the Commission for further proceedings. (R. 835).

The petition for rehearing was overruled, without comment, on May 15th, 1946.

JURISDICTION.

This Honorable Court has jurisdiction under United States Code, Title 28, Section 347 (Judicial Code, Section 240, amended) to grant this petition for certiorari.

QUESTIONS PRESENTED.

Question No. 1: Should the Honorable Fifth Circuit Court, after properly construing Section 11 (b) (1) of the Holding Company Act and in the light of controlling and undisputed evidence of economies and advantages flowing from joint management and control of Petitioner's oil business and gas utility business, have modified the order of the Securities and Exchange Commission and permitted the retention of these properties in the same holding company system?

Question No. 2: Should not the Honorable Fifth Circuit Court, upon rejecting the Securities and Exchange Commission's interpretation of the Public Utility Holding Company Act of 1935 as requiring a functional or operational relationship between the utility and non-utility properties to permit retention thereof in the same holding company system, have remanded the case to the Commission for further consideration of the evidence and findings since the Commission has not made findings under a proper construction of Section 11 (b) (1) of the Act?

Question No. 3: Has not the Honorable Fifth Circuit Court invaded the province of the Securities and Exchange Commission in passing upon the weight of evidence under a correct interpretation of Section 11 (b) (1) of the Public Utility Holding Company Act of 1935—a question which the Commission had not previously passed upon?

REASONS FOR ALLOWANCE OF THE WRIT.

1. An important question of federal law which has not been, but should be, settled by this Court is involved in this proceeding. Interpretation of the Public Utility Holding Company Act of 1935, from the standpoint of the character of evidence required to satisfy the conditions of the Act for retention of non-utility properties and utility properties in the same holding company system, is required for final determination of the issues.

The first "other business" clause of Section 11 (b) (1) of the Act provides the Commission "shall take such action as the Commission shall find necessary to limit the operations of the holding company system of which such company is a part to a single integrated public utility system and to such other businesses as are reasonably incidental or economically necessary or appropriate to the operations of such integrated public utility system". The second "other business" clause of that section says "The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public utility systems the retention of an interest in any business (other than the business of a public utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems". The Act sets forth no test of what constitutes a business reasonably incidental or economically necessary or appropriate to the operations of the utility system or necessary or appropriate in the public interest or for the protection of investors or consumers, and not detrimental to the proper functioning of the utility system.

In the words of the Commission the evidence here "shows at great length the affinity between oil and gas production, the close operating relations of Arkansas Oil and Arkansas Gas, which are under common management,

the treatment of natural gas by plants of the oil company, and a number of operating savings and financial advantages achieved by joint operation of the two companies" (R. 653), yet the Honorable Fifth Circuit Court of Appeals concluded that "No case is made here of the public interest or protection of investors and consumers making necessary the retention of these oil businesses." (R. 838).

The nation wide importance of the question to the utility industry, the consuming public, and the investors in the industry makes it timely for the Court to grant this writ and review the case.

2. The decree of the Honorable Fifth Circuit Court is in direct conflict with that of the Honorable United States Court of Appeals for the District of Columbia in Engineers Public Service Company versus Securities and Exchange Commission, 138 F. (2d) 936, now pending in this Honorable Court on certiorari and assigned for reargument during the week of October 14th. The court in the Engineer's case gave the second "other business" clause of Section 11 (b) (1) of the Act the same interpretation as did the Fifth Circuit Court, and eliminated the Commission's functional or operational requirement, but remanded the case to the Commission for further consideration of the evidence under the Court's interpretation, as the Commission had not considered the evidence in the light of that interpretation.

The Court of Appeals of the District of Columbia set out the sort of evidence deemed sufficient under the Act thus, at page 949:

"The joint operation of the business has been conducted with the permission of the State of Virginia and has been efficient and advantageous to consumers. There has been joint use throughout of personnel and property; 13.8 per cent of the transportation employees also perform services for the electric department and a total of 305 employees ranging from executives to minor employees render service to both systems. Joint use is made of property of the value of $2,750,000 which includes office buildings, storage facilities, automotive equipment, poles, manholes, rights of way, etc. The transportation system derives all of its electric energy (at a cost in 1940 of $218,000) from the electric department which has provided special facilities for that purpose. The transportation department furnished free transportation to electric employees to the extent of $108,000 in 1940.

"The trolley service has gradually declined and the bus service has gradually grown until it is now slightly over 50 per cent of the whole. The railway system in 1940 received gross operating revenues of $2,447,000 but a net operating deficit of $43,000. The bus properties received gross operat-

ing revenues of $2,580,000 and net operating revenues of $151,000 so that the gross income (after depreciation) from the transportation department was $106,000. The net income in 1940 was $24,-800. For years the transportation operations as a whole have produced a regular but small annual net profit. Studies offered by accountants indicated economies from joint operation amounting to $249,000 a year, of which $108,000 was credited to free transportation allowed electric employees. The Commission doubted whether a saving was actually made through the free transportation service."

* * * * * * * * *

"From this outline it appears that substantial evidence was presented from which the Commission might have found that the retention of the transportation business was necessary in the public interest or for the protection of investors or consumers, or if not necessary, at least appropriate for these purposes in the ordinary acceptation of these terms; but in the absence of functional relationship between the transportation business and the electric system, no such finding could be made under the Commission's interpretation of the Act."

The evidence in Petitioner's case, summarized under Statement of the Matter involved above, is stronger,

broader and more favorable to retention of the non-utility properties than that in the Engineers Public Service Company case. Yet the Honorable Fifth Circuit Court concluded "no case is made", while the District of Columbia Court under evidence attacked by the Commission as inaccurate, concluded to the contrary, or that that determination should be by the Commission. The Commission in the instant case has not attacked, but has admitted, the accuracy and substantial character of Petitioner's evidence.

Should certiorari be denied Petitioner and thereafter this Honorable Court affirm the decision of the United States Court of Appeals for the District of Columbia in the case of *Engineers Public Service Company v. Securities and Exchange Commission*, the controlling authority of the decision of this Honorable Court in that case will be unavailing to Petitioner and its right to retain its oil business with its single integrated gas utility will be lost, although supported by evidence stronger and broader than the evidence on the same issue in the *Engineers* case.

Wherefore, Petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in the case numbered and entitled on its docket No. 11,052,

Arkansas Natural Gas Corporation, Petitioner, versus Securities and Exchange Commission, Respondent, to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals be reversed by this Court, and for such further relief as to this Court may seem proper.

HENRY C. WALKER, JR.,
JOHN O. WICKS,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM A. D. 1945

No.

ARKANSAS NATURAL GAS CORPORATION,
Petitioner,

versus

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

This brief is respectfully submitted by Petitioner, Arkansas Natural Gas Corporation, in support of the foregoing Petition for Writ of Certiorari.

OPINION OF THE COURT BELOW.

The Honorable Fifth Circuit Court's opinion (R. 829) rendered March 22, 1946, is not yet officially reported.

JURISDICTION.

This Court has jurisdiction to grant the Writ applied for under United States Code, title 28, section 347 (Judicial Code, section 240 amended). *Otis & Company v. Securities and Exchange Commission, 323 U. S. 624, 89 L. ed. 460.*

The proceeding was instituted by order of the Securities and Exchange Commission on July 3, 1941. The order of the Commission is dated May 5, 1944. Petition to review the Commission's order was filed in the Honorable United States Circuit Court of Appeals for the Fifth Circuit on June 8th, 1944, within the time limitation provided by Section 24 of the Public Utility Holding Company Act of 1935. The Honorable Circuit Court's opinion was rendered March 22nd, 1946. Petitioner's petition for rehearing was filed April 9th, 1946 and denied May 15th, 1946.

STATEMENT OF THE CASE.

A summary statement of the nature of this proceeding is set forth in the preceding petition for writ of certiorari. Additional facts will be developed in the argument to follow.

SPECIFICATION OF ERRORS.

1. The Honorable Fifth Circuit Court, construing Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 as not requiring a functional relationship between utility and non-utility properties, contrary to the interpretation of the Securities and Exchange

Commission, erred in failing to modify the Commission's order to permit retention of Petitioner's oil business together with its integrated gas utility system since the only evidence in the record shows, as a matter of law, that such retention is necessary or appropriate in the public interest, for the protection of investors and consumers, and is not detrimental to the functioning of the utility.

2. At least the Honorable Fifth Circuit Court, upon properly construing the Act, erred in not remanding the cause to the Securities and Exchange Commission for further consideration of the evidence and findings in the light of the Act as properly construed, since the Commission had made no findings from the evidence except under its erroneous interpretation of the Act.

ARGUMENT.

The Honorable Fifth Circuit Court, construing Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 as not requiring a functional relationship between utility and non-utility properties, contrary to the interpretation of the Securities and Exchange Commission, erred in failing to modify the Commission's order to permit retention of Petitioner's oil business together with its integrated gas utility system since the only evidence in the record shows, as a matter of law, that such retention is necessary or appropriate in the public interest, for the protection of investors and consumers, and is not detrimental to the functioning of the utility.

It is evident from a reference to the Commission's opinion that it did not base its divestment order on the failure of Petitioner's evidence adequately to show advantages and economies accruing to Petitioner, its investors, to the public and to its gas consumers from retention of the oil business in Petitioner's holding company system. Its order was predicated on its interpretation of the Act as requiring a functional or operational relationship between the utility and non-utility properties before retention could be permitted (R. 654).

The Commission describes the utility system thus:

> "The production, transmission and distribution properties of Arkansas Gas are all located in the same general area in the States of Arkansas, Louisiana and Texas. The main body of the area forms a rough triangle, encompassing approximately 31,000 square miles, with the base of the triangle in northern Louisiana and its apex in lower Arkansas. Lines run west into East Texas and north into upper Arkansas. Within this area, which has a population of over 1,500,000, the company has 103 distribution plants (63 in Arkansas alone), all coordinated with the production and transmission properties so that at all times the requirements of each outlet are anticipated and can be satisfied. The distributing system is divided into 33 field offices, each possessing local control, but all subject to general coordinating authority from the company's main offices, located at Shreve-

port, Louisiana. We find that Arkansas Gas operates a single integrated gas utility system." (R. 651).

The evidence, and the only evidence, in the record here shows annual savings to the Petitioner by the operation of its oil business together with its gas utility business of $405,987.00, of which $223,735.00 accrues to the utility and $182,252.00 to the non-utility properties, for the year ending December 31, 1940. (R. 569-592). The integrated gas system had gross revenue of $8,119,411.00, net income of $1,033,601.00 and operating expenses of $6,093,-742.00. (R. 145-146). Thus the annual savings to the gas properties effected by joint operation with the oil properties is approximately 3% of its gross income, more than 21% of its net income and nearly 4% of its operating expenses. For the same year the oil properties had net income of $430,638.00. (R. 158). The annual savings to the oil properties, therefore, amount to more than 42% of its net income.

In addition to such savings and economies, the evidence shows that the joint Geological and Land Departments result in very substantial benefits to the gas property by considerably increasing the natural gas reserves behind the gas transmission and distribution facilities through the transfer to the gas company, at cost, of gas discovery wells and the conservation of gas produced with oil which otherwise would be wasted. (R. 60-61, 236-237, 360-361, 431-457, 482-483, 535). This conservation of gas is not only in the interest of the utility, but is in the interest of the public as well. The oil company renders a

necessary service to the utility by operation of its gasoline plants in removing liquids contained in wet gas, which operation is necessary to eliminate the hazard of using wet gas in the utility's lines. (R. 314-315, 338-339, 364-365, 399-400, 410-413, 512-513). Bank credit is enhanced by the common operation and both the operating gas and oil properties, and Petitioner, have received the benefit of lower interest rates thereby. (R. 540-547). The economies effected have reduced the utility's rates to its consumers as, under public regulation, any savings to the utility beyond the return permitted by regulation inures to the benefit of the consumer through the reduction of rates. (R. 314-317, 338, 340). These facts are established by the testimony of such witnesses as Bell, Vice President of the Republic National Bank of Dallas, Texas, a bank which is thoroughly conversant with the securities of oil and gas companies situated in the Mid-Continent oil and gas field; Murrell, President of the Commercial National Bank in Shreveport, Louisiana, as to which institution the same comment may be made; Cleveland, the President of Guaranty Trust Company of New York, and Ruddick, a member of the investment firm of Smith, Barney & Co., each of whom is familiar with Petitioner's oil and gas properties and stated the reasons supporting their conclusions that the investments of public and private investors owning Petitioner's securities would be adversely affected by the divorcement of the gas and oil businesses and that the retention of the oil business with the utility was for the protection of investors. (R. 544-549, 538-543, 398-406). Lasley, author of the Arkansas Public Utility regulatory law and the first Chairman of the Department

of Public Utilities of the State, and Counsel of that Commission when this cause was before the Securities and Exchange Commission and who instituted the last general investigation and rate proceeding of the gas utility company, lasting several years and reviewing every phase of the business of that utility and its relation to and joint operation with the Petitioner's oil business; and Mehlburger, who was the engineering member of the same Arkansas Commission at such time and during such proceeding, testified that they were intimately acquainted with the operations of the two businesses; that there was subsantial saving to the companies and particularly to the utility, and, therefore, to the consuming public, permitting the reduction of rates, by the joint operation of these businesses and that such joint operation was in no respect detrimental to the functioning of the utility. (R. 305-310, 315, 318, 326-328, 330-333, 337-345, 347, 349).

Large stockholders living in widely scattered sections of the United States testified that they were familiar with the operations of Petitioner's gas utility and oil business from inception; that each of them was the owner of large investments in the securities of Petitioner resting entirely on the subsidiary utility and oil companies of Petitioner and that they believed divorcement of such businesses would have a very serious adverse effect and that the retention in the same holding company system was manifestly for the protection of investors. They testified that they had contacted large numbers of private investors and without exception the opinion they expressed was that of those whose opinion they had sought. (R. 380-397, 354, 358, 360-367, 557-559).

The Commission, in its opinion, did not dispute these facts, but on the contrary, said:

> "The proof adduced to support the retainability of Arkansas Oil and its subsidiaries resembles the evidence relating to Cities Service Oil discussed in detail earlier in this opinion. It shows at great length the affinity between oil and gas production, the close operating relations of Arkansas Oil and Arkansas Gas, which are under common management, the treatment of natural gas by the plants of the oil company, and a number of operating savings and financial advantages achieved by joint operation of the two companies." (R. 652-653).
>
> * * * * * * * * *
>
> "We think the record demonstrates the truth of respondents' contention that the Oil and Gas Companies are closely related in many aspects. But it will be noted that the operational relation between the companies exists only in the gas production and conditioning phases, and not directly at any other point. When the crude oil and the natural gas have left the well mouth and the latter has been conditioned, the operational relation between the Gas Company and the Oil Company disappears." (R. 613).

While thus recognizing the economies and advantages resulting from the joint operation of the oil and gas properties, the Commission entered its divestment order against Petitioner as it interpreted Section 11 (b)

(1) of the Act to require the non-utility properties to be functionally or operationally related to the utility properties before their retention was permissible under the Act.

The Honorable Fifth Circuit Court rejected the Commission's interpretation of Section 11 (b) (1). Interpreting this section, the Court said:

> "That section puts the duty on the Commission to require Petitioner, as a holding company registered under the Act, to limit its operations to 'a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system.' The next words require that the holding company shall be permitted to continue to control additional public-utility systems under certain conditions, which we need not consider since only one system is here involved. The statute then recurs to the subject of 'other businesses' in these words: 'The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.' This sentence is not a redefining of the 'other businesses' previously mentioned as retain-

able, but is an enlargement, an addition thereto. In the first mention the operations of the utility system are in the foreground, and what is merely incidental to them, or what is economically necessary or appropriate to them may be retained. In the second mention of the other businesses the public interests, and the protection of investors and consumers are in the foreground, and retentions necessary and appropriate to protect these are permissible additionally, if not detrimental to the proper functioning of the system." (R. ~~832, 833~~). 831/

Eliminating, then, as the Court did, the requirement of an operational relationship between the oil and gas properties, the evidence and the Commission's findings as well show retention of Petitioner's oil properties with its gas utility to be in the public interest, for the protection of investors and for the protection of consumers and the Court, under such circumstances, should have rendered judgment for Petitioner.

> "The general rule that the appellate court may, on reversal, render or direct final judgment is particularly applicable where the facts of the case have been fully developed on the trial."
>
> * * * * * * * * *
>
> "Final judgment may also be rendered or directed where the facts of the case are undisputed by reason of the evidence being without material conflict or otherwise, and only a question of law is involved."
>
> *5 C. J. S., Section 1925, pp. 1429 and 1431.*

This Honorable Court in *Securities and Exchange Commission v. Chenery Corporation, 318 U. S. 80, 87 L. ed. 626,* said:

> "Congress has seen fit to subject to judicial review such orders of the Securities and Exchange Commission as the one before us. That the scope of such review is narrowly circumscribed is beside the point. For the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review. If the action rests upon an administrative determination—an exercise of judgment in an area which Congress has entrusted to the agency—of course it must not be set aside because the reviewing court might have made a different determination were it empowered to do so. But if the action is based upon a determination of law as to which the reviewing authority of the courts does come into play, an order may not stand if the agency has misconceived the law."

At least the Honorable Fifth Circuit Court, upon properly construing the Act, erred in not remanding the cause to the Securities and Exchange Commission for further consideration of the evidence and findings in the light of the Act as properly construed, since the Commission had made no findings from the evidence except under its erroneous interpretation of the Act.

The Commission has viewed the evidence in this record only with its erroneous interpretation of the Act in mind. It has never applied the test of the "second busi-

ness" clause of the Act, in the light of the Court's interpretation, to say that Petitioner's oil properties cannot be retained. This was the state of the record as the cause reached the Fifth Circuit Court.

That Court has held the Commission was in error in construing the Act as requiring the functional or operational relationship. The second "other business" clause, said the Court, "is not a redefining of the 'other businesses' previously mentioned as retainable, but is an enlargement, an addition thereto. * * * In the second mention of other businesses the public interests, and the protection of investors and consumers are in the foreground, and retentions necessary and appropriate to protect these are permissible additionally, if not detrimental to the proper functioning of the system." (R. ~~832, 833~~ 631)

After so construing the Act, however, the Court proceeded to pass upon the sufficiency of the evidence to permit Petitioner to retain its oil businesses when it said "No case is made here of the public interest or the protection of investors and consumers making necessary the retention of these oil businesses." (R. 832).

Petitioner submits that in so doing the Court invaded the province of the Commission and, in the absence of rendering a decree for Petitioner, the Court should have remanded the case to the Commission for further proceedings not inconsistent with its opinion.

In not so remanding the Honorable Fifth Circuit Court failed to follow the proper rule as laid down by this

Court in *Securities and Exchange Commission v. Chenery, 318 U. S. 80, 87 L. ed. 626, at pp. 633 and 636:*

"It is also familiar appellate procedure that where the correctness of the lower court's decision depends upon a determination of fact which only a jury could make but which has not been made, the appellate court cannot take the place of the jury. Like considerations govern review of administrative orders. If an order is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment cannot be made to do service for an administrative judgment. For purposes of affirming no less than reversing its orders, an appellate court cannot intrude upon the domain which Congress has exclusively entrusted to an administrative agency."

* * * * * * * * *

"It is not for us to determine independently what is 'detrimental to the public interest or the interest of investors or consumers' or 'fair or equitable' within the meaning of Sections 7 and 11 of the Public Utility Holding Company Act of 1935. The Commission's action cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order as an appropriate safeguard for the interests protected by the Act. There must be such a responsible finding."

Too, the Court's action was contrary to that of the Honorable United States Court of Appeals for the

District of Columbia in *Engineers Public Service Company v. Securities and Exchange Commission, 138 F. (2d) 936*, as appears in the foregoing petition for Writ of Certiorari. That Court remanded the case to the Commission for further proceedings on evidence less substantial than that presented here. Since it was the Commission's, not the Court's, province to pass upon the weight and sufficiency of the evidence under a proper construction of Section 11 (b) (1) of the Act, unless the evidence, as a matter of law, justified the Court's rendering judgment for Petitioner, and since it appears that should certiorari be denied Petitioner and thereafter this Honorable Court affirm the decision of the United States Court of Appeals for the District of Columbia in the case of *Engineers Public Service Company v. Securities and Exchange Commission, 138 F. (2d) 936*, the controlling authority of the decision of this Honorable Court in that case will be unavailing to Petitioner and its right to retain its oil business with its single integrated gas utility will be lost although supported by evidence stronger and broader than the evidence on the same issue in the *Engineers* case, it seems proper for this Honorable Court to grant the Writ of Certiorari applied for.

Respectfully submitted,

HENRY C. WALKER, JR.,
JOHN O. WICKS,
Counsel for Petitioner.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question involved	2
Statute involved	2
Statement	5
Argument	16
Conclusion	29

CITATIONS

Cases:

Cities Service Company, 8 S. E. C. 318 — 29

Cities Service Company, Holding Company Act Release No. 5028 (1944) — 11

Cities Service Company, Holding Company Act Release No. 5350 (1944) — 11, 21, 29

Engineers Public Service Company, et al. v. *S. E. C.*, 138 F. 2d 936, certiorari granted, 322 U. S. 723 (1944) — 12, 16, 17

Lone Star Gas Corporation, 12 S. E. C. 286 — 27

North American Company v. *S. E. C.*, 133 F. 2d 148, affirmed April 1, 1946, No. 1, Oct. Term, 1945 — 12, 14, 19, 20

Standard Oil Company (New Jersey), 10 S. E. C. 1122 — 29

Standard Oil Company (New Jersey), Holding Company Act Release No. 4617 (1943) — 29

Statutes:

Public Utility Holding Company Act of 1935, 49 Stat. 803, 15 U. S. C. 79a *et seq.*

Section 1 (b) (4), 15 U. S. C. 79a (b) (4) — 3, 18, 22

Section 1 (c), 15 U. S. C. 79a (c) — 2, 22

Section 2 (a) (4), 15 U. S. C. 79b (a) (4) — 3, 6

Section 2 (a) (5), 15 U. S. C. 79b (a) (5) — 3

Section 3 (a) (3), 15 U. S. C. 79 (c) (a) (3) — 29

Section 11 (b) (1), 15 U. S. C. 79k (b) (1) — 3, 10, 13, 16, 19, 23

Miscellaneous:

H. R. 5423, 74th Cong., 1st Sess. (1935) — 22, 24

S. 1725, 74th Cong., 1st Sess. (1935) — 22, 25

Hearings Before the Senate Committee on Interstate Commerce on S. 1725, 74th Cong., 1st Sess. (1935) — 22, 23, 24, 25, 26, 27

Hearings Before the House Committee on Interstate and Foreign Commerce on H. R. 5423, 74th Cong., 1st Sess. (1935), part 3 — 22, 24, 25

H. Doc. No. 137, 74th Cong., 1st Sess. (1935), p. 10 — 23

79 Cong. Rec. 10847 (1935) — 23

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 231

ARKANSAS NATURAL GAS CORPORATION, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 828), affirming a divestment order of the Securities and Exchange Commission ("the Commission") under Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 ("the Act"), 15 U. S. C. § 79k (b) (1), is reported in 154 F. 2d 597. The findings and opinion of the Commission (R. 594), dated May 5, 1944, are not yet officially reported but are set forth in the Commission's Holding Company Act of 1935 Release No. 5028.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on March 22, 1946 (R. 832). Rehearing was denied on May 15, 1946 (R. 837). The petition for a writ of certiorari was filed on June 24, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, 28 U. S. C. § 347, which is made applicable by Section 24 (a) of the Public Utility Holding Company Act of 1935, 15 U. S. C. § 79x (a).

QUESTION INVOLVED

Whether the Commission, in limiting petitioner to an integrated gas utility system pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935, properly ordered the divestment of petitioner's large oil enterprise (including production, transmission, refining and marketing—treated together as a single business by petitioner's request), as a non-utility business which did not meet the statutory standards for retention by a registered public utility holding company.

STATUTE INVOLVED

Section 1 (c) of the Act, 15 U. S. C. § 79a (c), declares it

> * * * to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, * * *.

In Section 1 (b) (4), 15 U. S. C. § 79a (b) (4) it is

> * * * declared that the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers of electric energy and natural and manufactured gas, are or may be adversely affected—
>
> * * * * *
>
> (4) when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties; * * *"

Section 2 (a) (5), 15 U. S. C. § 79b (a) (5), defines a "public utility company" to mean "an electric utility company or a gas utility company."

Section 2 (a) (4), 15 U. S. C. § 79b (a) (4), defines a "gas utility company" to mean

> Any company which owns or operates facilities used for the distribution at retail * * * of natural or manufactured gas for heat, light, or power. * * *

Section 11 (b) (1), 15 U. S. C. § 79k (b) (1) provides:

> (b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:
>
> (1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsid-

iary company thereof, shall take such action as the Commission shall find necessary *to limit the operations of the holding-company system* of which such company is a part *to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the reten-

tion of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems. [Italics supplied.]

STATEMENT

Petitioner, Arkansas Natural Gas Corporation ("Arkansas Natural") is admittedly subject to Section 11 (b) (1) as a registered public utility holding company itself[1] and as a subsidiary of Cities Service Company ("Cities Service") which is also a registered holding company.[2] The proceedings before the Commission involved the ap-

[1] Petitioner registered under the Act on April 22, 1938. Its holding company system comprises the following companies:

Arkansas Natural Gas Corporation
1. Arkansas Louisiana Gas Company
Gas Advisers, Inc.
2. Arkansas Fuel Oil Company
Arkansas Pipe Line Corporation
Arkansas Transit Corporation
Orange State Oil Company
Petroleum Advisers, Inc.
The Penn Wyo Trust
The Atlantic Oil Company
The Columbus Oil Company
The Phebus Oil Company
3. Lisbon Gasoline Company, Inc.
4. Transark Oil & Gas Company

[2] Cities Service registered under the Act on January 29, 1941.

plication of Section 11 (b) (1) to the entire Cities Service system and required Cities Service to divest itself of all interest, direct or indirect, in the oil business. Cities Service petitioned for review of that order but afterwards withdrew its petition.[3] The opinion and findings of the Commission deal at length with its reasons for ordering the divestment by Cities Service of its vast oil enterprises and incorporates those findings with a brief restatement thereof with respect to the required divestment by Arkansas Natural of its interest in the oil business (R. 597, 649, 653).

The utility business of Arkansas Natural is the retail gas distribution enterprise of its subsidiary, Arkansas Louisiana Gas Company ("Arkansas Gas") (R. 73, *et seq.*).[4] Arkansas Gas also owns and operates facilities for the production and transmission of natural gas (R. 49, *et seq.*), which facilities the Commission found were retainable under the Act by virtue of their close relationship to the public utility, i. e., retail distribution facilities, of the company (R. 651).

In addition to its gas operations, Arkansas Natural is engaged also in all phases of the oil busi-

[3] For a fuller discussion of this aspect of the case, see notes 9, 30, *infra*.

[4] As previously noted, *supra* p. 3, Section 2 (a) (4) defines a "gas utility company" as one "which owns or operates facilities used for the *distribution at retail* * * * of natural or manufactured gas for heat, light, or power." [Italics supplied.]

ness. In stating that petitioner's non-utility subsidiaries operate "largely within the area of the gas company's operations," the petition (p. 5) gives an inadequate picture of the geographical extent of this oil business and its relationship to the gas business. The non-utility business which the Commission ordered divested includes the extensive production, transportation, refining and marketing business of Arkansas Fuel Oil Company ("Arkansas Oil"), another subsidiary of petitioner (R. 5 (20), 653).[5] In contrast to the gas distribution system of Arkansas Gas, which is located in a relatively compact area in Eastern Texas, Arkansas and Northern Louisiana (R. 73, *et seq.*, 651), Arkansas Oil does business in a much greater area comprising the states of Kentucky, Tennessee, Alabama, Mississippi, Georgia, South Carolina, North Carolina, Virginia, Florida, as well as Arkansas, Louisiana and Texas (R. 415–16). It produces, transports and refines crude oil, and markets petroleum products (R. 408). It owns oil leases, pipe lines, an oil refinery, gasoline plants and other facilities incident and appurtenant to the petroleum business (R. 408). It markets its refined products, both at retail and

[5] Also ordered divested were two other small subsidiaries of petitioner, *viz.*, Lisbon Gasoline Co., Inc., which owns a small natural gasoline extraction plant in East Texas, and Transark Oil & Gas Co., which owns and operates a single gas well in Wyoming. The record contained no evidence that the operations of either company were in any way related to the utility business of Arkansas Gas (R. 655).

through jobbers, under Cities Service trade names throughout the South and Southwest (R. 414–16).* It has eight subsidiaries: Arkansas Pipeline Corporation and Arkansas Transit Corporation, both oil transmission companies; Orange State Oil Company, an oil products marketing company operating in Florida; a minority interest in Petroleum Advisers, Incorporated, a service company which services the oil subsidiaries of the entire Cities Service system; and four inactive companies owning oil and gas producing properties, namely, Penn-Wyo Trust and its subsidiaries, The Atlantic Oil Company, The Columbia Oil Company and The Phebus Oil Company (R. 550, *et seq.*, 652).

This oil business, while slightly smaller in terms of plant investment, is substantially larger

---

*Gasoline, the principal product of the oil company, is distributed both through company tank stations and independent jobbers. The following table shows the volume of sales in the respective States of distribution on an annual basis (as of the time of the hearing), the number of company tank stations and the number of independent jobbers in each State (R. 415–16).

	Barrels of gasoline	Company stations	Independent jobbers
Texas	302,000	21	2
Arkansas	334,000	49	3
Louisiana	578,000	49	4
Mississippi	270,000	40	3
Kentucky	61,000	1	7
Tennessee	218,000	8	18
Alabama	218,000	9	25
Virginia	258,000		21
North Carolina	250,000		28
South Carolina	154,000		17
Georgia	294,000	4	35
Florida	805,000	62	3

in terms of gross operating revenues than the public utility and non-public utility business of Arkansas Gas, which the Commission permitted petitioner to retain. Thus, as of December 31, 1941, Arkansas Gas had a plant and investment account of $52,935,654, and for the calendar year 1941 this company reported gross operating revenues of $8,462,759. By comparison, as of September 30, 1941, Arkansas Oil had a plant and investment account of $37,251,432, and for the year ending December 31, 1940, the gross operating revenues of it and of its subsidiaries were $21,545,454 (R. 157, 220, 608, 620, 650, 652). As these figures illustrate, the oil business of Arkansas Oil is a large one, both by absolute standards and by comparison with the entire utility and non-utility gas business of Arkansas Gas which petitioner is permitted to retain under the Commission's order.

Petitioner tendered no issue as to the retention of such portions of the oil business (*viz.*, production and conditioning) as might be related to the gas business controlled by petitioner through Arkansas Gas. Rather, it sought to justify retention of the oil business in its entirety (R. 610, 619, 653). In its effort to show a relationship of the latter to the operations of its public utility business, petitioner of necessity was forced to trace an attenuated chain of relationships, beginning with the retail gas distribution

properties which made Arkansas Gas a public utility company within the meaning of the Act.[7] There was, first, the relationship between that retail gas distribution business and the production and transmission of natural gas which the Commission found sufficiently substantial to justify retention of the gas properties in their entirety (R. 651).[8] Next, there was the relationship between the production of gas and the production of oil which the Commission also recognized to be of substantial importance, although finding it unnecessary to rule upon the retainability of the oil production properties severed from the balance of the oil business since no issue was tendered as to retainability on this basis (R. 610–611, 619, 653–4). Finally, there were the relationships in the production of oil, its transmission to refineries,

[7] See *supra* n. 4.

[8] Because of the substantial relationship between the gas production and transmission properties on the one hand, and the retail distribution business on the other, the Commission permitted retention of the entire gas properties. It did not accept petitioner's contention that the production and transmission facilities were part of petitioner's integrated public utility system, the Commission's theory being that, in any event, they were reasonably incidental to the retail gas business (R. 651). In the appeal to the court below, petitioner took exception to the Commission's failure to find that the gas production and transmission properties were part of its integrated utility system, but the court ruled that these properties were non-utility properties and were retainable only under the "other businesses" provisions of Section 11 (b) (1) (R. 830). The petition for certiorari takes no further issue on this aspect of the case.

refining and the marketing of the refined oil throughout the South and Southwest. It also appeared that the oil business of petitioner is but part of the larger continent-wide oil business controlled by Cities Service (R. 607, 610). It is now settled that this oil business must be separated from the public utility enterprises of Cities Service, including the gas utility system controlled by petitioner.[9] Petitioner's products are marketed under the Cities Service trade names (R. 609, 652) and, through Arkansas Oil, petitioner owns 17% of the capital stock of and receives services from Petroleum Advisers, Inc., which renders services to the various non-utility subsidiaries in the Cities Service system that are interested in the oil business (R. 224, 648).

It was against this background that the Commission was required to evaluate what petitioner has characterized as "undisputed" testimony with respect to the financial advantages which it attributed to, and claimed would be lost by a severance of, the existing common management be-

[9] The Commission's order in the present proceedings required Cities Service to confine its operations to a certain defined integrated gas utility system, and to a gas production and transmission company found to be retainable under the "other businesses" clauses. *Cities Service Company*, Holding Company Act Release No. 5028 (1944) (R. 594, et seq.). Thereafter, Cities Service requested a modification of that order which would permit it to comply with the Act and the order by disposing of its utility interests. This request was granted. *Cities Service Company*, Holding Company Act Release No. 5350 (1944).

tween Arkansas Gas and Arkansas Oil. We indicate below (pp. 18 *et seq.*) why the Commission was warranted in attaching relatively little weight to this "testimony."

In concluding that petitioner could not retain its interest in the oil business as a unified whole, the Commission made its determination in the alternative (R. 620–622, 653–654). It followed, first, what it regards as the proper interpretation of the two "other businesses" provisions of Section 11 (b) (1), which interpretation requires a showing that the other business be related to the operations of the retainable public utility business.[10] It applied, secondly, a different interpretation, with which it disagrees but with which petitioner is in accord, set forth in the opinion of the Court of Appeals for the District of Columbia in *Engineers Public Service Company, et al.* v. *S. E. C.*, 138 F. 2d 936 (1943),[11] which interpreta-

[10] This construction had been upheld by the Circuit Court of Appeals for the Second Circuit in *North American Company* v. *S. E. C.*, 133 F. 2d 148 (1943), but the interpretative issue was not brought to this Court, certiorari being granted on the issue of constitutionality only, 318 U. S. 750 (1943). The judgment was affirmed on April 1, 1946. No. 1, Oct. Term, 1945.

[11] Certiorari granted, 322 U. S. 723 (1944). Oral argument was heard during the October, 1945 Term. Reargument is scheduled for this Term.

As more fully developed in the briefs in that case, the issue before the Court of Appeals was the correctness of the Commission's ruling that Engineers could not retain along with the electric utility properties of Virginia Public Service Company serving a large portion of the State of Virginia, trans-

tion does not require such operational relationship if the Commission can make the affirmative finding that retention of the non-utility business is not detrimental to the functioning of the retainable utility system and is necessary or appropriate in the public interest or for the protection of investors or consumers. The application of the statutory standards for retention of the non-utility interests is first discussed in that portion of the Commission's opinion dealing with the Cities Service oil and gas situation (R. 620–622), this discussion being later incorporated by reference in the portion dealing with the subsidiary holding company system of petitioner, Arkansas Natural, and its oil enterprises (R. 653). With

portation properties in the Norfolk area which were relatively minor asset-wise and as a source of income. In holding these transportation properties not retainable, the Commission had relied primarily upon the absence of a relationship "to the operations of" such "integrated public utility system(s)" as those words are used in the two "other businesses" provisions of Section 11 (b) (1), and had concluded that such operating relationship was necessary to retention within the meaning of both clauses read together. The Court of Appeals construed the second "other businesses" provision as a relaxation of the first and ordered the case remanded to the Commission on the theory that under that Court's construction the Commission might have found, despite the absence of any operating relationship, that the transportation properties in question were retainable as "necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems" under the concluding clause of the second "other businesses" provision.

particular reference to the retention of the Cities Service oil business in its entirety but also applicable to the issue tendered by petitioner here, the Commission noted that "Acceptance of respondents' contention that the statute permits a combination of holdings such as these would result in a distortion of the perspective of the Act. In reality the respondents are asking us to find that a relatively small gas distributing business is reasonably incidental to a vast non-utility business * * *" (R. 617). The Commission then reiterated its statement in the *North American* case that: "In the ordinary case, therefore, we believe the statute contemplates that after compliance with Section 11 (b) (1) the integrated systems retainable by a registered holding company will constitute its primary business and that retainable non-utility interests will occupy a clearly subordinate position" (R. 617).[12]

The Commission also gave consideration to the respects in which the Circuit Court of Appeals for the Second Circuit and the Court of Appeals for the District of Columbia differed in their in-

[12] See note 11 *supra* and compare the statement of this Court in the *North American* case, that the purpose of Section 11 (b) (1) is that "other [i. e., nonutility] holdings may be retained only if their retention is related to the operations of the retained utility properties" (slip opinion, p. 6), and that "holding companies are compelled to integrate and coordinate their systems and to divest themselves of security holdings of geographically and economically unrelated properties" (slip opinion, p. 11).

terpretations of the "other businesses" provisions of Section 11 (b) (1), but concluded that, under either interpretation, the oil enterprises were not retainable. Thus, the Commission's opinion and findings stated (R. 621–2):

> We need not, in this case, make a choice between the variant readings. In both reviewed cases the non-utility businesses sought to be retained were relatively minor. No problem comparable to that presented here was before either court. Neither court was required to determine whether, upon any reading of the statute, large, complicated, self-contained, unitary oil production, transmission and distribution businesses could be retained together with relatively minor utility assets. Certainly the Court of Appeals for the District of Columbia did not decide that this legislation could be made only incidentally a system of regulating public utility holding companies by an acceptance of the respondents' contentions.

Specifically, as regards petitioner's oil business, the Commission noted (R. 653–4):

> * * * We have considered earlier in this opinion the requirements demanded of any business claimed to be "reasonably incidental, or economically necessary or appropriate" to the operations of a public-utility system. We cannot conclude that the Arkansas Oil business meets those requirements. *Nor can we find, even if we*

were required to read the "second other business" clause as an exclusive standard, that the requirements of the Act have been met. [Italics supplied.]

The Commission's order was affirmed by the United States Circuit Court of Appeals for the Fifth Circuit on a construction of the statute assumed by petitioner—with which assumption we do not presently take issue—to be in accord with that of the Court of Appeals for the District of Columbia (R. 828). However, like the Commission, the court found that, even under the construction more favorable to petitioner, no case had been made out for the retention of petitioner's oil business. Following denial of rehearing by that court, the instant petition for certiorari was filed.

ARGUMENT

1. Contrary to petitioner's assertion, this case presents no question as to the proper construction of the "other businesses" provisions of Section 11 (b) (1). The Commission has heretofore stated to this Court that the proper interpretation of the "other businesses" provisions of Section 11 (b) (1) is a question of substantial public importance.[13] Our opposition to the instant petition is

[13] The Commission sought certiorari on this question in the *Engineers* case. Certiorari was granted both on the petition of the Commission and on the cross petition of Engineers which was filed with respect to other rulings in the case which upheld the views of the Commission. Subsequently, there

solely because we do not agree with petitioner that those questions are presently involved. As noted above, the Commission made its decision in the instant case after the judgment of the Court of Appeals for the District of Columbia in the *Engineers* case, and rested its decision in the alternative: first, upon its own interpretation of the statute which had been rejected by the Court of Appeals for the District of Columbia; and, secondly, upon the interpretation adopted by that court in that case, upon which petitioner relies.[14]

---

was voluntarily divested from the Engineers system the transportation business which was specifically discussed in the ruling of the Court of Appeals, rendering the issue moot except as to the possibility that the interpretative question may yet be involved as respects other non-utility properties which are owned by certain companies whose divestment was ordered by the Commission, but which order is subject to review by this Court. Engineers has filed certain plans with the Commission involving, *inter alia*, divestment of these remaining non-utility properties which would render the interpretative issue entirely moot. These plans, however, are under consideration by the staff and have not been approved by the Commission.

[14] Thus, contrary to petitioner's allegations (Pet., p. 12), the decree of the court below is not at all in conflict with that of the District of Columbia Court of Appeals in the *Engineers* case in failing to remand the matter to the Commission for further findings in light of what it considered to be the correct construction of Section 11 (b) (1). In the *Engineers* case the Commission's findings had been predicated upon a construction which was inconsistent with that adopted by the Court of Appeals. In the instant case, however, the determination of the Commission was alternatively based on both competing constructions of the Act.

For the same reason, denial of certiorari will not, as the

2. The record before the Commission revealed a holding company system which combined a highly speculative, large oil business covering twelve states throughout the South and Southwest, with a comparatively small, stable natural gas utility business operating in a compact area in Eastern Texas, Arkansas and Northern Louisiana. The Commission also found that, apart from the production and conditioning of gas and oil, both involving non-utility facilities under the statutory definition, there was no relationship between the two businesses other than common ownership and joint management which, of course, could exist with respect to the most divergent types of businesses. (R. 613, 634–635.) Moreover, the Commission had before it a statute whose stated purpose was to eliminate the evils which Congress found to exist when the composition of a public utility holding company system bore "no relation to economy of management and operation or the integration and coordination of related operating properties". Furthermore, the legislative history, discussed below pp. 23–27, clearly indicated that a specific purpose of Congress in

---

petition alleges (p. 15), deprive petitioner of its assumed right to retain its oil business in the event of an affirmance by this Court in the *Engineers* case. The interpretative issue may now be moot in that case (see *supra*, n. 13), but if not, an affirmance on the construction of the Court of Appeals can result only in remanding that case to the Commission for further findings in accordance with such construction. In the instant case divestment was ordered even under that construction of the statute.

enacting Section 11 (b) (1) was to separate a large oil business such as petitioner's from common ownership and management with a natural gas utility enterprise. Such factors formed the basis for the Commission's conclusion that it could not make the necessary affirmative finding that retention of petitioner's extensive and ramified oil business in its entirety was "necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of" its retainable public utility system.

These undisputed facts make relevant what this Court observed in the *North American* case that "Congress has concluded from the extensive studies made prior to the passage of the Act that the economic advantages of a holding company at the top of an unintegrated, sprawling system are not commensurate with the resulting economic disadvantages" (slip opinion, p. 15). Petitioner's evidence was in no way calculated to show anything unusual about the relationship between its utility system and the extensive oil properties ordered divested, such as might warrant an exception from the overriding policy of Section 11 (b) (1).[15] The Commission, accordingly, was

[15] See the statement of this Court in the *North American* case that Congress adopted Section 11 (b) (1) for the purpose of compelling holding companies "to divest themselves of security holdings of geographically and economically unrelated properties" (slip opinion, p. 11).

warranted in giving relatively little weight to the alleged financial savings and benefits of common management and joint use of operating personnel stressed by petitioner in its effort to preserve the *status quo*. Taken at face value, these savings would only amount to 0.98% of the gross expenses of the oil business and 3.6% of the gross expenses of the gas business.[16] Considering the fact that there are so many intangibles which must be taken into account in any attempt to trace the ultimate relation of such expenditures to net income, and the failure of petitioner's estimates to give any consideration to compensatory factors involved in the separation of the two businesses, these relatively low percentages of gross expenses only serve to emphasize the inherent unreliability of petitioner's hypothesis that the amounts involved could be translated into correspondingly greater percentage savings in ultimate net incomes. As stated by Circuit Judge Swan in the *North American* case, 133 F. 2d, at 152, "whether economy is achieved by centralized control is always a doubtful question." As previously noted, petitioner's estimates took no account of countervailing factors, including advantages to be derived

[16] Petitioner estimated an increase of approximately $182,000 in the annual operating expenses of the oil business and approximately $223,000 in the operation of independent gas facilities (R. 569). 1940 expenses amounted to $18,426,605 for the oil company (R. 157) and $6,093,741 for the gas company (R. 145).

from the employment of executives and office personnel who would devote their entire attention to the affairs of the gas system which would produce results fully worth the additional salary expenses, or the disadvantages incident to setting up the oil business as a separate business, independent of Cities Service, with the necessity for developing its own trade names and marketing arrangements, which might outweigh any temporary disadvantages of severance at the point of contact between the natural gas and oil businesses of petitioner.[17]

Nor did these estimates take into account the disadvantage from the point of view of petitioner's oil business of having it enmeshed in a system of regulation primarily adapted to holding companies in the public utility field.[18] Thus, even from the

[17] Petitioner's estimates of increased expenses incorrectly assumed the continued existence of Arkansas Natural as an integral part of the Cities Service system and failed to take into account the fact that Cities Service has indicated its intention to dispose of all of its gas utility properties. See *Cities Service Company*, Holding Company Act Release No. 5350 (1944) and n. 9, *supra*. If Arkansas Natural were not to separate its oil and utility properties, then Cities Service would have to dispose of its entire interest in Arkansas Natural, including the oil business presently involved.

[18] Prior to the passage of the Act, spokesmen for companies interested in both the natural gas and oil businesses clearly recognized that the strict regulation provided in the Act was inappropriate for a business as highly competitive and speculative as the oil business, where even a small amount of delay incident to Commission supervision might handicap essential business dealings. See, *e. g.*, the statement of R. W.

viewpoint of the interests of its own existing investors, petitioner made an inconclusive showing.

3. The basic weakness of petitioner's showing was the attempt by what was only opinion testimony, although reduced to dollars and cents estimates, to negative the basic economic philosophy and policy of the Act [19] as applied to the combination of a gas utility system and a large oil enterprise such as are found in the present case. Thus,

---

Gallagher of Standard Oil Company that "It is not the purpose and intent of this bill (i. e., S. 1725) to regulate the oil business", and that "the provisions of the statute * * * make it actually impracticable and impossible for an oil company to register and comply with the law." *Hearings before the Senate Committee on Interstate Commerce on S. 1725*, 74th Cong., 1st Sess. (1935), p. 962 (hereinafter called "*Senate Hearings*"); see also *Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 5423*, 74th Cong., 1st Sess. (1935), part 3, p. 1704 (hereinafter called "*House Hearings*"). The inappropriateness of the statute as a mechanism for the regulation of the oil business was also noted by the Commission in its findings and opinion (R. 619).

[19] As previously indicated, Section 1 (c), 15 U. S. C., § 79a (c) states—

"* * * it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section * * *."

The problems and evils so enumerated include the adverse effect on the national public interest and the interest of investors and consumers which Congress found may result—

"* * * when the growth and extension of holding companies bears no relation to economy of management *and operation* or the *integration and coordination of related operating properties.*" (Section 1 (b) (4), 15 U. S. C., § 79a (b) (4)). [Italics supplied.]

petitioner did not indicate how the Commission could have reconciled with the philosophy and legislative history of the Act the retention of its oil business as consistent with the public interest and not detrimental to the functioning of its system.

Prior to the passage of the Act, the National Power Policy Committee had recommended to the President that—

> Holding companies should be restricted as soon as practicable to the business of operating and of owning the securities of public-utility properties; they should not be permitted to engage in non-utility or speculative ventures.[20]

As stated by Senator Wheeler, one of the sponsors of the Act, Section 11 (b) (1) was devised for the purpose of requiring "utility holding companies to get out of the myriad of speculative non-utility adventures in which they have been promiscuously active in the past."[21]

---

[20] H. Doc. No. 137, 74th Cong., 1st Sess. (1935), p. 10.

[21] 79 Cong. Rec. 10847. Thomas G. Corcoran, a draftsman of the present Act, also stated during the course of the hearings before the Senate Committee (*Senate Hearings*, p. 202):

"The bill also attempts to simplify the problems of the investor by encouraging a simple capital structure and a simple company so far as its property interests are concerned, so that when the investor buys into this greatest of all our industries he will buy into a company in which the security structure is simple enough so that he will know what he is getting, *and, furthermore, he will buy into a public utility operating-company business and nothing else. He will not*

The Commission pointed out in its findings and opinion (R. 618) that, prior to the passage of the Act, holding company representatives had brought the relationship between the oil and natural gas utility businesses to the attention of the congressional committees since they recognized that separation of the two businesses would be required if the bill were enacted into law. They presented extensive testimony—in many respects similar to that offered by petitioner in the instant case—in an effort to persuade Congress to permit the continued combination of these businesses.[22] At the hearings before the House Committee, their testimony was offered in connection with Section 7(a) of H. R. 5423 which, together with Section 2(a)(4) of that bill, provided a broader definition of the gas public utility business than that which was finally enacted into law, for it included production and transmission in addition to the distribution of natural gas, thus including a phase of the gas business which is operationally related to the production of oil. Respecting this proposal, Mr. Ralph W. Gallagher, of the Standard Oil Company of New Jersey, stated:

---

be buying into the gasoline business, and he will not be buying into half a dozen other unrelated businesses which, buying as the average investor buys securities, he would not completely understand he was going into." [Italics supplied.]

[22] *E. g.*, see *House Hearings*, Part 3, pp. 1704–06, 1799, 1865; *Senate Hearings*, pp. 202, 662, 668, 685, 959, 961, 962.

> *A company having an interest in subsidiaries engaged in the oil business would be prohibited from having an interest in natural gas utility companies* * * *. it is not the purpose and intent of this Bill to regulate the oil business. It is clearly the intent that the public utility business shall be separated from all other businesses * * *[23]

A printed brief issued by a committee representing the natural gas industry noted with regard to H. R. 5423:

> *By this section [7 (a)] a combination of the oil and gas businesses is prohibited.*[24] [Italics supplied.]

Section 8 (a) of the Senate proposal (S. 1725) contained the same provision as Section 7 (a) of the House bill already noted. At the hearings before the Senate Committee, Mr. Ralph B. Feagin, appearing on behalf of the committee representing the natural gas industry, stated:

> * * * it seems to us very clearly to be the meaning of that section that *a company that is engaged primarily in the oil business under this act will be forced to*

[23] *House Hearings*, Part 3, pp. 1704–05. The same comment of Gallagher appears in a prepared statement submitted to the Senate Committee, which appears in *Senate Hearings*, p. 961.

[24] *House Hearings*, Part 3, pp. 1798–99. A similar statement with reference to Section 8 (a) of the Senate bill is contained in a brief filed by the same committee which appears in *Senate Hearings*, p. 959.

> *dispose of its interest in the natural gas business* * * *
> * * * The segregation is in the form of isolation of the natural-gas business from the oil business and the electric business.[25] [Italics supplied.]

Mr. J. R. Munce, Vice President of the petitioner, Arkansas Natural, complained also that under S. 1725 "the present centralized operations would have to be broken up."[26]

As in the present case, industry representatives then placed great emphasis on the operational relationship in the production of oil and gas. As noted in the Commission's opinion (R. 618), this, however, failed to impress the legislators as a sufficient reason for permitting the continued combination of a large unified oil business and a gas utility enterprise. Thus, Senator Wheeler, Chairman of the Senate Committee, stated:

> I do not see any reason why, for instance, an oil company that produces gas should not be able to separate the oil from the gas, and sell the gas to a gas company.[27]

Senator Couzens, a member of the Committee, also remarked:

> I am not trying to segregate the production of oil and gas, but rather I am interested

[25] *Id.*, pp. 662–663. For a similar statement, see also *id.*, p. 670.

[26] *Id.*, p. 975.

[27] *Id.*, p. 665.

> in the question after it leaves the wells. I have a very great ambition to separate them so far as they serve the public interest after they leave the wells. * * * [28]

In light of the over-all purpose of Section 11 (b) (1) and the specific legislative history noted above, the Commission concluded, first with regard to the Cities Service system (R. 618):

> The Act, as it affects the issues in this case, is the result of careful deliberation on the very problems here presented. It was the intention, manifest in the Act as passed, that the retention of an oil business together with a gas distribution business be permitted only upon the showing of a relation between the two, in specific cases, which would warrant such retention.[29] And it was not the intention to make the Act a means of absorption of relatively minor utility

---

[28] *Id.*, p. 669. The legislative history also reveals a subsidiary purpose of the statute to provide free competition between oil and gas companies in the heating field. Thus, Senator Wheeler stated during the course of the Senate Hearings (*Id.*, p. 671):

"The theory upon which the bill is drawn is that there should be competition among these different heating facilities and methods."

[29] Such was the case of the *Lone Star Gas Corporation*, 12 S. E. C. 286 (1942), where the Commission permitted retention of an oil interest in connection with a natural gas public utilities system. That case involved *only oil production* which was merely a by-product of the gas operations and was smaller in size than the utility operations. There was no oil business as such.

> enterprises by vast industrial combinations. We cannot find that the oil business is "reasonably incidental, or economically necessary or appropriate" to any utility operations in the Cities system.

With regard to the holding company system of the petitioner, Arkansas Natural, the Commission noted (R. 653):

> * * * The same fundamental reasons which applied in the Cities Service Oil situation apply here to forbid the retention of Arkansas Oil * * *
>
> * * * as in the case of Cities Service Oil, the link at which the oil company is joined to the utility is oil production, which is merely a portion of the operations of the business claimed to be retainable. The business *as a whole*—and we are asked to consider it as a whole—cannot be said to possess the statutory relation to the utility operations of Arkansas Gas.
>
> We could not find otherwise consonantly with the purposes and history of the Act. * * *

Since the passage of the Act, every registered holding company other than petitioner which had a major investment in the oil business has complied with divestment orders of the Commission and has either divested itself of its oil business or has entered upon a program of separation of the oil and gas businesses pursuant to the statu-

tory mandate.[30] Petitioner's lone attempt to challenge such a divestment order, therefore, presents no issue of general applicability to combinations of oil and gas properties.

CONCLUSION

The decision of the court below is correct and no question is presented which would warrant

[30] Cities Service and Standard Oil Co. of N. J., both major oil companies and holding companies within the definition of the Act, each filed an application for exemption under Section 3 (a) (3), 15 U. S. C., § 79c (a) (3), as being "only incidentally a holding company" and primarily engaged in the oil business. Both applications were denied. (*Cities Service Company*, 8 S. E. C. 318 (1940); *Standard Oil Company* (New Jersey), 10 S. E. C. 1122 (1942).) Thereafter, Standard Oil made certain corporate changes designed to effect the disposition of its utility interests which was accomplished pursuant to Commission order. (*Standard Oil Company* (New Jersey)), Holding Company Act Release No. 4617 (1943). As indicated *supra*, n. 9, the Commission's original order in the instant proceedings involving the entire Cities Service system of which Arkansas Natural is a constituent part, required the divestment of Cities Service's oil properties. Upon Cities Service's request, that order was modified to permit the company to comply with the Act by disposing of its utility interests. (*Cities Service Company, Holding Company* Act Release No. 5350 (1944).) While the opinion suggests disposition of "its holdings in all utility companies," Cities Service has represented that it intends to dispose of its utility holdings only to the extent necessary to obtain an exemption under Section 3 (a) (3). However, no intimation has been given that it would claim such an exemption if it retains its indirect interest in Arkansas Gas.

further review by this Court. Accordingly, the petition for certiorari should be denied.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

ROGER S. FOSTER,
Solicitor,

ROBERT S. RUBIN,
Assistant Solicitor,

HARRY G. SLATER,
Counsel, Public Utilities Division.

ALEXANDER COHEN,
Attorney,
Securities and Exchange Commission.

JULY, 1946.

U. S. GOVERNMENT PRINTING OFFICE : 1946